

UNITED STATES OF AMERICA  
UNITED STATES COAST GUARD vs.  
MERCHANT MARINER'S DOCUMENT NO. Z-1205-214-D2  
Issued to: Don Merrill Hollingsworth

DECISION OF THE COMMANDANT  
UNITED STATES COAST GUARD

2128

Don Merrill Hollingsworth

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 5.30-1.

By order rendered on 15 July 1977, an Administrative Law Judge of the United States Coast Guard at Seattle, Washington, admonished Appellant upon finding him guilty of misconduct. The specification found proved alleges that while serving as a third pantryman on board the SS President Fillmore under authority of the document above captioned, on or about 13 May 1977, appellant did "wrongfully create a disturbance aboard said vessel by yelling and addressing foul and abusive language to a fellow crewmember, J. B. ALLEN."

At the hearing, Appellant elected to act as his own counsel and entered a plea of not guilty to the charge and specification.

The Investigating Officer introduced in evidence seven exhibits.

In defense, Appellant offered in evidence his own testimony and no exhibits.

At the end of the hearing, the Judge rendered a written decision in which he concluded that the charge and specification had been proved. He then served a written order of admonition on Appellant.

The entire decision and order was served on 18 July 1977. Appeal was timely filed on 12 August 1977.

FINDINGS OF FACT

On 13 May 1977, Appellant was serving as third pantryman on board SS PRESIDENT FILLMORE and acting under authority of his document while the ship was at sea located at 33°14'N, 134°03'E. At that date and place there was a verbal confrontation involving Appellant and other members of the ship's crew, after which the rooms occupied by Appellant and other crewmembers were searched for intoxicating liquor.

### BASES OF APPEAL

This appeal has been taken from the order imposed by the Administrative Law Judge. It is urged that Chief Officer Bland's statement attached to the log is false; that the other log entries do not provide substantial reliable evidence to prove the offense alleged; and that Appellant's "Freedom of Speech" entitled him to respond to accusations made against him, so that, in effect, any statements he may have made should be treated as justifiable in defense of his interests. Appellant also claims that the only statement he made to J. B. Allen was on the order of "What are you talking about, man," and that he therefore did not make any "foul" or "abusive" remarks.

APPEARANCE: Appellant pro se.

### OPINION

As a consequence of the verbal confrontation and subsequent search of rooms, appellant was charged with misconduct, with two specifications alleging wrongful possession of intoxicating liquor and wrongful creation of a disturbance by yelling and addressing foul and abusive language to a fellow crewmember, J.B. Allen. At the hearing, the Administrative Law Judge found that the specification regarding wrongful possession of intoxicating liquor was not proved, so that this appeal is concerned only with the specification alleging that Appellant wrongfully created a disturbance by yelling and addressing foul and abusive language to J. B. Allen.

The evidence offered in support of the allegation consists of certified extracts from the shipping articles and the ship's official log; a written statement attached to the log by the ship's Chief Officer, C. P. Bland; and Bland's testimony taken by deposition at a later date. Review of the log entries and Baland's statement shows that a "shouting match" did take place, and that some of the language used could be considered "foul" or "abusive," but there is no clear showing at any point that the arguably "foul" language was used by this appellant, rather than by others involved in the confrontation. Similarly, the deposition of Bland's testimony shows that Appellant and another crewmember, after being accused of hitting a third crewmember, shouted back various remarks at their accuser, and that some of those remarks may have been "foul" or "abusive," but there is no direct statement that Appellant himself uttered any of the "foul" words allegedly used. See the transcript of the deposition, at pp. 8-9.

### CONCLUSION

On the basis of this record, I cannot conclude that there is substantial, reliable and probative evidence that Appellant has committed the offense alleged. Thus the burden of proof imposed under 46 CFR 5.20-95(b) has not been met.

ORDER

The order of the Administrative Law Judge rendered at Seattle, Washington, on 15 July 1977, is VACATED, and the charge is DISMISSED.

R. H. SCARBOROUGH  
Vice Admiral, U. S. Coast Guard  
ACTING COMMANDANT

Signed at Washington, D.C., this 27th day of JULY 1978.

## INDEX

Burden of proof

    Misconduct

    Not met in this case

Disturbance

    Creation of, as misconduct